

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In the Matter of:	:	Case No. 08-52470
	:	Chapter 7; Judge John E. Hoffman, Jr.
Mikki Sue Gray	:	
	:	
Debtor.	:	

WILLIAM B. LOGAN, JR., TRUSTEE	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adv. Pro. No.
	:	
WMC MORTGAGE CORP.	:	
PO Box 54089	:	
Los Angeles, CA 90054-0089	:	
	:	
Defendant	:	

COMPLAINT TO AVOID AND RECOVER MORTGAGE

Jurisdiction and Parties

1. Jurisdiction over this Adversary Proceeding is proper pursuant to 28 U.S.C. §1334, 28 U.S.C. §157, and the General Order of Reference entered in this District.
2. Venue over this Adversary Proceeding is proper pursuant to 28 U.S.C. §1409.
3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (K).
4. Plaintiff is the duly appointed and acting Trustee in the Chapter 7 Bankruptcy Case filed by Debtor, Mikki Sue Gray ("Debtor").
5. Debtor filed her Voluntary Chapter 7 Petition on March 21, 2008.

6. The Debtor owns real property located at 311 Simpson Road, London, Ohio 43140, which real property constitutes property of their bankruptcy estate pursuant to 11 U.S.C. §541.

7. Defendant purports to have a mortgage against Debtor's real property pursuant to a mortgage recorded with the Madison County Recorder's Office on September 15, 2004. A copy of this mortgage is attached hereto as Exhibit "A".

8. Defendant's mortgage, as recorded, contains acknowledgement language and a signature and seal of a notary public, but the acknowledgement does not identify whose signature or execution is being acknowledged.

9. Pursuant to Ohio Revised Code §5301.01, a mortgage must be signed by the mortgagor and the signing must be acknowledged by the mortgagor before a notary public who shall certify the acknowledgement.

10. Defendant's mortgage is defective under Ohio law.

11. Pursuant to Ohio Revised Code §5301.25, only instruments, including mortgages which are properly executed may be recorded in the office of the county recorder.

12. Pursuant to 11 U.S.C. §544(a), Plaintiff has, as of the commencement of the case and without regard to any knowledge of the Trustee or of any creditor, the rights and powers of, and he may avoid any transfer of property of the debtor or any obligation incurred by the debtor, that is avoidable by, among others, a bona fide purchaser of real property.

13. Pursuant to 11 U.S.C. §544(a), Plaintiff may avoid Defendant's defective mortgage against Debtors' real property.

14. Pursuant to 11 U.S.C. §551, Defendant's mortgage, once avoided, is preserved for the benefit of the bankruptcy of the estate.

WHEREFORE, Plaintiff demands judgment against Defendant in the form of an order avoiding Defendant's mortgage against the Debtor's real property, for an order preserving that mortgage for the benefit of the bankruptcy estate, and for such other relief as this Court deems appropriate.

Respectfully submitted:
LUPER NEIDENTHAL & LOGAN
A Legal Professional Association

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